

No. \_\_\_\_\_

05-483 OCT 12 2005

In The  
Supreme Court of the United States

OFFICE OF THE CLERK

COLLINS HOLDING CORPORATION, *et al.*,

*Petitioners.*

v.

SOUTHTRUST BANK,

*Respondent,*

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI  
WITH APPENDIX

Charles E. Carpenter, Jr.  
*Counsel of Record*  
Carmen V. Ganjehsani  
RICHARDSON, FLOWDEN,  
CARPENTER & ROBINSON, P.A.  
1600 Marion Street - P.O. Drawer 7788  
Columbia, South Carolina 29202  
(803) 771-4400

*Counsel for Petitioners*

**QUESTION PRESENTED**

Whether a Federal District Court, sitting in the State of Alabama applying Alabama substantive law, can impose Georgia substantive law to add a provision to a settlement negotiated at a mediation session held physically in Georgia?

## LIST OF PARTIES TO THE PROCEEDING

The parties to the proceeding are listed below:

### Plaintiff:

1. SouthTrust Bank

### Defendants:

1. Collins Holding Corporation, which is the successor in interest to Collins Music Co., Inc. a/k/a Collins Music Company, Inc.
2. 501(c)(3) Charity Consultants, Inc.
3. Collins Coin, Inc.
4. Collins Games of Georgia, Inc.
5. The following named defendants, Electronic Games of Alabama, Inc. f/k/a Collins Games of Alabama, Inc., Collins Games of Colorado, Inc., Collins Games of Florida, Inc., Collins Games of Indiana, Inc., Collins Games of Kentucky, Inc., Collins Games of Louisiana, Inc., Collins Games of Minnesota, Inc., Collins Games of Mississippi, Inc., Collins Games of Missouri, Inc., Collins Games of South Dakota, Inc., Collins Games of Tennessee, Inc., Collins Games of Texas, Inc., Collins Games of West Virginia, Inc., and Collins Games of Wisconsin, Inc., were merged into Collins Holding Corporation on or about October 5, 2001.
6. Named defendant Carolina Amusement Services, Inc. was merged into Carolina Redemption, Inc. on or about October 5, 2001.

7. Named defendant Davis Music and Amusement Services, Inc. was terminated as a corporate entity on or about July 31, 2002.

Pursuant to Rule 29.6 of the Rules of this Court, there are no parent corporations of the remaining named defendants and no publicly owned company owns ten percent or more of the remaining named defendants.

# TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED.....	i
LIST OF PARTIES TO THE PROCEEDING .....	ii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES .....	vii
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW .....	2
JURISDICTION .....	2
RELEVANT STATUTORY PROVISIONS.....	3
STATEMENT OF THE CASE.....	3
I. History of the Pertinent Facts Leading to the Commencement of the Lawsuit Filed by SouthTrust.....	3
II. The Lawsuit Commenced by SouthTrust Against Collins Holding .....	5
III. The Mediation.....	5
IV. The District Court's Switch from Applying Alabama Law to Applying Georgia Law To Determine Whether Collins Holding Had Agreed to the Terms of Paragraph 4.....	10

V.	The District Court's Conclusions of Law.....	14
VI.	The Eleventh Circuit Opinion .....	15
VII.	Basis for District Court and Eleventh Circuit Jurisdiction.....	16

#### REASONS FOR GRANTING THE PETITION ..... 16

I.	The District Court Violated 28 U.S.C. § 1652 and Well-Established Judicial Mandates Set by this Court When It Shifted From Properly Applying Alabama Substantive Law to Applying Georgia Substantive Law Solely Because the Parties Had Mediated the Alabama Dispute in Georgia for Convenience Alone.....	17
II.	The District Court's Order Adversely Disrupts the Uniform Application of Alabama Substantive Law within the State of Alabama and Deprives Collins Holding and Fred Collins of the Right to Obtain the Benefits of the Settlement Agreement Negotiated with SouthTrust .....	24
III.	The Eleventh Circuit Failed in its Duty to Independently Review the District Court's Determinations of State Law .....	25

IV.	The Issue of Whether a Federal District Court Sitting in One Jurisdiction Can Impose the Law of a Second Jurisdiction Solely Because the Parties Chose to Mediate the Case in the Second Jurisdiction Presents an Important and Recurring Issue that Warrants This Court's Review.....	28
-----	--	----

CONCLUSION .....	30
------------------	----

APPENDIX	
----------	--

## TABLE OF AUTHORITIES

### PAGE(S)

### CASES

<u>Benchmark Med. Holdings, Inc. v.</u> <u>Rehab Solutions, LLC,</u> 307 F. Supp.2d 1249 (M.D. Ala. 2004).....	19
<u>Boardman Petroleum, Inc. v. Fed. Mut. Ins. Co.,</u> 135 F.3d 750 (11th Cir. 1998).....	19
<u>Bryant v. Cruises, Inc.,</u> 6 F. Supp.2d 1314 (N.D. Ala. 1998) .....	19
<u>Daniel v. Scott,</u> 455 So.2d 30 (Ala. Civ. App. 1984).....	20
<u>Day &amp; Zimmermann, Inc. v. Challoner,</u> 423 U.S. 3 (1975).....	19
<u>Farmers &amp; Merchants Bank of Centre v. Hancock,</u> 506 So.2d 305 (Ala. 1987).....	23
<u>First Nat'l Life Ins. Co. v.</u> <u>Fid. &amp; Deposit Co. of Maryland,</u> 525 F.2d 966 (5th Cir. 1976) .....	22
<u>Franklin Life Ins. Co. v. Ward,</u> 187 So. 462 (Ala. 1939) .....	21, 22
<u>Ideal Structures Corp. v.</u> <u>Levine Huntsville Dev. Corp.,</u> 396 F.2d 917 (5th Cir. 1968).....	22

<u>J.R. Watkins Co. v. Hill</u>	
108 So. 244 (Ala. 1926) .....	21
<u>Klaxon Co. v. Stentor Elec. Mfg. Co.</u>	
313 U.S. 487 (1941) .....	18, 19, 24
<u>Marshall v. U.S.</u>	
360 U.S. 310 (1959) .....	27
<u>New York City Transit Auth. v. Beazer</u>	
440 U.S. 568 (1979) .....	18
<u>Owens v. Superfos A/S</u>	
170 F. Supp.2d 1188 (M.D. Ala. 2001) .....	22
<u>Pembroke State Bank v. Warnell</u>	
471 S.E.2d 187 (Ga. 1996) .....	20
<u>Ruiz v. Tenorio</u>	
392 F.3d 1247 (11th Cir. 2004) .....	26
<u>Salve Regina College v. Russell</u>	
499 U.S. 225 (1991) .....	26, 27
<u>Sigalas v. Lido Mar., Inc.</u>	
776 F.2d 1512 (11th Cir. 1985) .....	26
<u>Warner v. Pony Express Courier Corp.</u>	
675 So.2d 1317 (Ala. Civ. App. 1996) .....	20
 <u>STATUTES</u>	
28 U.S.C. § 1254(1) .....	2
28 U.S.C. § 1291 .....	16

28 U.S.C. § 1332 .....16

28 U.S.C. § 1652 .....3, 17, 20, 23

IN THE  
SUPREME COURT OF THE UNITED STATES

---

No. 05-

---

COLLINS HOLDING CORPORATION, et al.,

*Petitioners.*

v.

SOUTHTRUST BANK,

*Respondent.*

---

On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

---

Petitioner Collins Holding Corporation and the other Collins entity defendants named in this action ("Collins Holding") respectfully request that this Court grant its Petition for a Writ of Certiorari to review the decision and judgment of the United States Court of Appeals for the Eleventh Circuit issued in favor of SouthTrust Bank ("SouthTrust"). The decision below allows a federal district court sitting in the State of Alabama applying Alabama substantive law to impose Georgia substantive law to add a material provision to a settlement negotiated at a mediation solely on the basis that the mediation session was held physically in Georgia. This violates the fundamental

requirement that a federal district court apply the substantive law of the state in which it sits.

### OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit filed on May 11, 2005 is unpublished and appears in the Appendix of this Petition ("Pet. App.") at 1a-5a.

The Order of the United States District Court for the Northern District of Alabama, Southern Division in SouthTrust Bank v. Collins Holding Corporation, et al., Case No. CV-04-P-0354-S, filed October 22, 2004, granting SouthTrust's Motion for Order to Enforce Settlement Agreement and denying Collins Holding's Motion for Enforcement of Settlement Agreement and Amended Motion for Enforcement of Settlement Agreement is unpublished and appears at Pet. App. 6a-8a. The District Court's Findings of Fact and Conclusions of Law filed contemporaneously with its Order on October 22, 2004 are unpublished and appear at Pet. App. 9a-42a.

The Order of the Eleventh Circuit filed on July 14, 2005 denying Collins Holding's Petition for Rehearing *En Banc* is unpublished and appears at Pet. App. 43a-44a.

### JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered its opinion on May 11, 2005. The Eleventh Circuit entered its Order denying Collins Holding's Petition for Rehearing *En Banc* on July 14, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).